

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JAMAR JOHNSON, Ph.D.,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. 3:06-cv-812-WKW
)	
ERNEST HAIRSTON, et al.)	
)	
Defendants.)	

DEFENDANT BILL STARK, CAPTIONED MEDIA PROJECT DIRECTOR,
CAPTIONED MEDIA PROGRAM NATIONAL ASSOCIATION OF THE DEAF
MOTION TO DISMISS OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

COMES NOW Bill Stark, Captioned Media Project Director, Captioned Media Program, National Association of the Deaf (“Defendant”), by and through undersigned counsel, and pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, moves this Court to dismiss Plaintiff’s claims for lack of jurisdiction over the subject matter and/or failure to state a claim upon which relief can be granted. This motion is submitted upon the pleadings and the affidavit of Nancy J. Bloch, submitted herewith.

In support of this motion, Defendant advances the following grounds:

1. Plaintiff, Jamar Johnson, Ph.D., brings a claim for money damages against Defendant, Bill Stark, Captioned Media Project Director, Captioned Media Program, National Association of the Deaf (“Defendant”), and others arising from an alleged failure to “closed caption the TV & DVD.” *See* Complaint ¶ 1.
2. The National Association of the Deaf (NAD) is a non-profit organization, established in 1880, whose mission is “to promote, protect, and preserve the rights and quality of

life of deaf and hard of hearing individuals in the United States of America.” *See*

<http://www.nad.org/site/pp.asp?c=foINKQMBF&b=261467>.

3. As a national federation of individual members, state associations, organizational and corporate affiliates, the advocacy work of the NAD encompasses a broad spectrum of areas including, but not limited to, accessibility, education, employment, healthcare, mental health, rehabilitation, technology, telecommunications, and transportation.

4. Billy (“Bill”) L. Stark is employed by the NAD as the Project Director for the Captioned Media Program (CMP), a program funded by a U.S. Department of Education cooperative agreement that is administered by the NAD.

5. Prior to the filing of the Complaint, Plaintiff had no communication or relationship, contractual or otherwise, with Defendant.

6. Defendant produces no programming for broadcast on television.

7. Defendant has no contractual or other obligation, including any obligation at law, to caption any programming for broadcast on television.

8. Section 713 of the Telecommunications Act of 1996, Pub. Law 104-104, 110 Stat. 56, requires television video program distributors (cable operators, broadcasters, satellite distributors, and other multi-channel video programming distributors) to close caption their programs. *See* 47 U.S.C. § 613.

9. In 1997, the Federal Communications Commission (FCC) adopted regulations implementing Section 713 of the Telecommunications Act of 1996. *See* 47 C.F.R. § 79.1.

10. Defendant is not a video program provider or video program distributor, and, therefore, Defendant is not subject to the telecommunications Act of 1996 or the regulations

promulgated by the FCC to implement the Act.

11. There is no private right of action to enforce the Telecommunications Act of 1996. *See* 47 U.S.C. § 613.(h).

12. FCC regulations provide a process for filing administrative complaints with the FCC about closed captioning of television video programming. *See* 47 C.F.R. § 79.1(g).

13. Defendant produces no DVD's for sale or rent.

14. Defendant has no contractual or other obligation, including any obligation at law, to caption any DVD's produced by others for sale or rent.

15. In accordance with a cooperative agreement with the U.S. Department of Education, Defendant selects prerecorded uncaptioned educational material and reproduces that material with captions in a multitude of media formats, including DVD's for distribution at no cost to consumers. *See* www.captionedmedia.org.

16. All educational materials reproduced and distributed at no cost to consumers by Defendant are captioned.

WHEREFORE, this action should be dismissed in its entirety for lack of jurisdiction over the subject matter and/or for failure to state a claim upon which relief can be granted.

Respectfully submitted this 26th day of October, 2006.

s/Robert D. Segall
Robert D. Segall (SEG003)
*Attorney for Bill Stark, Captioned Media
Project Director, Captioned Media
Program, National Association of the Deaf*

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by U.S. Postal Service the document to the following:

Jamar Johnson, Ph.D.
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Phenix City AL 36869

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s/Robert D. Segall

cc: Nancy J. Bloch
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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

JAMAR JOHNSON, Ph.D.,)	
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Plaintiff,)	
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v.)	Civil Action No.: 3:06-CV812-WKW
)	
ERNEST HAIRSTON, et al.,)	
)	
Defendants.)	

AFFIDAVIT

1. The undersigned Affiant, Nancy J. Bloch, declares and affirms under penalties of perjury, that the following statements are true.
2. Affiant is the Chief Executive Officer of the National Association of the Deaf (NAD).
3. Affiant is competent to testify and has personal knowledge of the matters stated herein.
4. Billy ("Bill") L. Stark (Stark) is employed by the NAD as the Project Director for the Captioned Media Program (CMP), a program funded by a U.S. Department of Education cooperative agreement that is administered by the NAD.
5. The cooperative agreement, "Open-Captioned Educational Media, Video Selection, Captioning, and Distribution" (No. H327N010001) (the "agreement"), is designed to support activities related to the selection, acquisition, open-captioning, and distribution of educational media on a nonprofit free-loan basis, for use by students who

are deaf or hard of hearing, parents of deaf or hard of hearing children, and individuals directly involved in activities promoting the advancement of individuals who are deaf or hard of hearing. This agreement is referred to in paragraph 15 of the pending Motion to Dismiss or, in the alternative, for Summary Judgment.

6. The agreement, approved for five (5) years (October 1, 2001-September 30, 2006), directs the following actions:

- a. Obtain educational media from producers and distributors for screening, evaluation, and captioning.
- b. Select from titles submitted by evaluators those that closely match the national curricular needs, taking into account the media most commonly used in school districts across the nation for students.
- c. Make arrangements with respective educational producers and distributors to purchase, caption, and distribute selected media.
- d. For selected educational media purchased, have captions prepared by captioning agencies that meet guidelines for captioned media, taking into account the age and reading levels of the likely target audience.
- e. Maintain a clearinghouse of information on the subject of captioning for use by consumers, agencies, corporations, businesses, and schools, making all information accessible via the Internet.

7. Selected educational media are captioned and distributed through the U. S. mail service in DVD/video format and/or through Internet streaming to registered CMP clients (i.e., school personnel and families).

8. The NAD and CMP produce no programming for broadcast on television.
9. The NAD and CMP have no contractual or other obligation to caption any programming for broadcast on television.
10. The NAD and CMP produce no DVDs for sale or rent.
11. Prior to the filing of the Complaint, Plaintiff had no communication or relationship, contractual or otherwise, with the NAD, CMP, or Stark.

10/24/06
Date

Nancy J. Bloch
Nancy J. Bloch
Chief Executive Officer
National Association of the Deaf